

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT WINCHESTER

2010 FEB -1 A 8:25

WESLEY BRETT GARNER,)
GARRETT WESTON GARNER, EMC)
INCORPORATION BUILDING)
SYSTEMS, and MATTHEW C. ELLIS,)

Plaintiffs,)

vs.)

AMERICAN NATIONAL PROPERTY)
AND CASUALTY COMPANY,)
SCOTTSDALE INSURANCE)
COMPANY and PROGRESSIVE)
HAWAII INSURANCE)
CORPORATION,)

Defendants.)

Civil Action No. 4:10-cv-6
TWELVE PERSON JURY DEMANDED

Mattice Lee

NOTICE OF REMOVAL

Comes the Defendant, Progressive Hawaii Insurance Corporation, by and through counsel, and petitions this Court for removal of an action filed in the Circuit Court for Grundy County, Tennessee. For grounds, the Defendant would show unto the Court as follows:

1. The Plaintiffs filed a Complaint and Summons in the Circuit Court for Grundy County, Tennessee under Docket No. 8173 on the 22nd day of December, 2009. The Plaintiffs served each Defendant through the Commissioner of Commerce and Insurance pursuant to *Tennessee Code Annotated* § 56-2-501 on January 7, 2010. Tenn. Code Ann. § 56-2-501(2009). Progressive Hawaii Insurance Corporation received the Summons and Complaint on January 18, 2010. Co-Defendants American National Property and Casualty Company and Scottsdale Insurance Company received their Summonses and Complaints on January 22, 2010 and January 14, 2010, respectively.

2. This Defendant avers that the Plaintiffs have improperly and fraudulently joined their claims in one lawsuit to seek to defeat removal and diversity jurisdiction. Thus, to the extent the Plaintiffs assert claims that are not subject to removal, those claims should either be disregarded for removal purposes or severed and remanded to state court.

3. This lawsuit involves claims for breach of contract wherein the Plaintiffs seek recovery from the Defendants under several insurance policies allegedly insuring a different property at 634 and 638 Fletcher Road, Gruetli-Laager, Grundy County, Tennessee. The Plaintiffs contend that they are entitled to payment for the loss and damage to the above-named property as a result of vandalism and fires on December 29, 2008. The Plaintiffs also seek recovery for bad faith damages, treble damages under the Tennessee Consumer Protection Act, and attorneys' fees.

4. While the Plaintiffs do not specifically allege an *ad damnum*, the Plaintiffs assert claims, which if successful, would result in a total recovery against Progressive Hawaii Insurance Corporation in a sum in excess of \$75,000.00 as is required by 28 U.S.C.A. § 1332. This Defendant believes that the claims against its Co-Defendants, if successful, would also result in recoveries in a sum in excess of \$75,000.00. A copy of the Summons and Complaint are attached hereto as **Exhibit A**.

5. This Notice of Removal is filed within the statutory period required by 28 U.S.C.A. § 1446.

6. The Plaintiffs are citizens and residents of Tennessee.

7. Defendant Progressive Hawaii Insurance Corporation was incorporated under the laws of the State of Ohio with its principal place of business in Cleveland, Ohio. It was not incorporated in Tennessee, and its principal place of business is not located in Tennessee.

8. Defendant American National Property and Casualty Company was incorporated under the laws of the State of Missouri with its principal place of business in Cleveland, Ohio. It was not incorporated in Tennessee, and its principal place of business is not located in Tennessee.

9. Defendant Scottsdale Insurance Company was incorporated under the laws of the State of Arizona with its principal place of business in Scottsdale, Arizona. It is not incorporated was not incorporated in Tennessee, and its principal place of business is not located in Tennessee.

10. Accordingly, there is complete diversity of citizenship between the parties as is required by 28 U.S.C.A. § 1332. Further, the amount in controversy exceeds \$75,000.000 exclusive of costs and interest. Therefore, this cause is within the statutory jurisdiction of this Court as set forth under 28 U.S.C.A. § 1332.

WHEREFORE, this Defendant, Progressive Hawaii Insurance Corporation, respectfully requests this Honorable Court permit the removal of this action from the Circuit Court for Grundy County, Tennessee, and to proceed with this action of its own accord.

Respectfully submitted,

TRAMMELL, ADKINS & WARD, P.C.

By 

Terrill L. Adkins, BPR #013138
Attorney for Progressive Hawaii Ins. Corp.
P.O. Box 51450
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing has been served on all parties herein by delivering same or by posting same in the United States Mail, postage prepaid, to:

Michael M. Raulston, Esq.
511 Georgia Avenue, 2nd Floor
Chattanooga, TN 37403

N. Mark Kinsman, Esq.
J. Chad Hogue, Esq.
Baker, Kinsman, Hollis, Clelland & Winer, P.C.
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Chattanooga, TN 37402

Parks Chastain, Esq.
Brewer, Krause, Brooks, Chastain & Burrow, PLLC
611 Commerce Street, Suite 2600
Nashville, TN 37203

This 21 day of Jan., 2010.

By: _____

Terrill L. Adkins